

## **ENVIRONMENTAL LAW AND EXECUTIVE ORDER SUMMARY**

### **National Environmental Policy Act (NEPA)**

42 U.S.C. 4231-4370

**Background:** NEPA was passed in 1969 and is considered the “grandfather” of all domestic environmental laws. NEPA requires the environmental consequences of major actions be considered and encourages public involvement in the decision-making process.

**Risk:** NEPA established the requirements for all commercial and Federal agencies to allow public comment on the environmental decision-making process; to consider the environmental impacts of the proposed actions; and to examine all reasonable alternatives before making a decision. NEPA always requires environmental analysis and may require Environmental Assessments (EAs).

### **Clean Air Act (CAA)**

42 U.S.C. 7401-7671

**Background:** The CAA was first passed in 1970, significantly amended in 1977, and amended again in 1990. This legislation is designed to prevent, control, and abate air pollution in the United States.

**Risk:** The CAA and its amendments create compliance risk for any activity that creates airborne pollutants. These pollutants include powerplant/vehicle exhaust, volatile organic compounds released from painting processes, and even the fumes/mists released from metal plating operations. The regulations developed from the 1990 CAA Amendments may allow additional taxes or fees for “hazardous air pollutants” (HAPs) emissions. The HAPs list includes many paint solvents used in Army coatings and may impact the fumes/mists emitted from plating operations. CAA regulations are enforced using state and local agency permits. Permit provisions vary considerably across the United States and are generally considered the most restrictive in California’s South Coast and Bay Area, Air Quality Management Districts. Failure to comply with air emission permit requirements can lead to notices of violations, \$250,000/day fines or, in worst-case scenarios, five-year prison terms for individuals.

### **Clean Water Act (CWA)**

33 U.S.C. 1251-1376

**Background:** The CWA was first passed in 1972, was amended in 1987, and is currently being reauthorized. This legislation is intended to control and abate water pollution throughout the United States.

**Risk:** The CWA compliance risk is similar to that for the CAA. State and local agencies issue the aqueous pollutant emission permits that form the basis for enforcement provisions. Proposed provisions of the reauthorized CWA will include taxes based on the discharge of specific hazardous chemical pollutants into the environment. Taxes/fees will be higher for facilities emitting more hazardous pollutants such as heavy metals from plating shops than those emitting ordinary sewage or other less-hazardous wastewater. Violations of state/local water quality permits can lead to notices of violations, fines of \$50,000/day, and in worst-case scenarios, two-year prison terms.

### **Resource Conservation and Recovery Act (RCRA)**

42 U.S.C. 6901-6992

**Background:** RCRA was first passed in 1976 and amended in 1984. This legislation is intended to ensure the safe, environmentally acceptable handling of hazardous wastes.

**Risk:** RCRA establishes guidelines and standards for hazardous waste handling, transportation, treatment, storage, and disposal. RCRA even includes some pollution prevention-type provisions. RCRA is an enormous body of legislation with far too many provisions to summarize in this guide. As described in RCRA section 6002, Federal agencies in their procurement activities are required to eliminate from their specifications any exclusion of recovered materials or requirements for virgin materials. Federal agencies must require the use of recovered materials to the maximum extent possible without jeopardizing the intended use of the item. RCRA compliance violations can lead to notices of violation and a maximum punishment of a \$1,000,000 fine.

#### Federal Facilities Compliance Act (FFCA)

**Background:** The FFCA was passed in 1992 and eliminates the historical “sovereign immunity” for Federal facilities that was originally described in the Resource Conservation and Recovery Act.

**Risk:** The FFCA allows the Federal Environmental Protection Agency (EPA) or the individual states to file civil charges against Federal agencies. This means Federal employees must now comply with the same environmental regulations that have impacted private industry since the early 1970’s. The enforcement provisions for the FFCA vary with the individual laws being enforced and with specific state regulations.

#### Pollution Prevention Act of 1990 42 U.S.C. 13101-13109

**Background:** This policy states that pollution should be prevented or reduced at the source whenever feasible. Pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible. Pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible. Disposal or other releases into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

**Risk:** No enforcement provisions.

#### Federal Technology Transfer Act (FTTA)

**Background:** The FTFTA was passed in 1986. The FTFTA provides a basis for U.S. Federal laboratories and U.S. industry in forming partnerships for jointly expanding innovative technologies and developing new research opportunities.

**Risk:** The FTFTA creates a framework for U.S. Federal laboratories and U.S. industry to enter into Cooperative Research and Development Agreements (CRDAs). Through the Environmental Protection Agency FTFTA Program, the CRDAs engage government and industry technical, business, marketing, and legal staff in conducting research to expand promising technologies. The results of the CRDAs enable both the U.S. Government and U.S. industry to share resources while reducing liabilities, and gaining a competitive edge in the global market place.

### **EXECUTIVE ORDERS**

Executive orders signed by the President have recently created specific pollution prevention requirements applicable to DoD.

## Requirements”

Executive Order 12856 requires acquisition program managers to implement pollution programs at government and contractor facilities. The DoD as a whole is required to reduce its release of toxic chemicals (as defined in section 2-206 of the Executive Order) by 50% by 1999 from a 1994 baseline. E.O.12856 also includes provisions for eliminating hazardous materials from standardized documentation packages (including military specifications). These changes in documents may affect the development of acquisition program technical data packages.

Executive Order: 12843 “Procurement Requirements and Policies for Federal Agencies for Ozone-

Executive Order 12843 states that it is an executive branch policy to minimize the procurements of materials and substances that contribute to stratospheric ozone depletion (e.g., refrigerants and fire suppressants). It also gives preference to the procurement of chemicals, products, and manufacturing processes that reduce overall risks to health and to the environment. The policy requires amending existing and new contracts so ozone-depleting chemical phase-out schedules are considered. In response to E.O. 12843, DoD developed a protocol for addressing ozone-depleting chemical uses. In accordance with DoD policy any effort to include an ozone-depleting compound in a procurement contract, must be approved by Senior Approving Officials (typically Senior Executive Service level). Obtaining such approvals could delay the acquisition program schedule.

Executive Order: 12873 “Federal Acquisition, Recycling, and Waste Prevention”

Executive Order 12873 mandates that the Federal government make more efficient use of natural resources by maximizing recycling and preventing waste generation wherever possible. This act specifically requires all government-owned, contractor-operated (GOCO) facilities to include recycling provisions in all contracts awarded after 20 October 1993. Furthermore, managers must consider eliminating requirements for the use of virgin materials, conduct life cycle cost analyses of recycled materials, and implement source reduction planning.

Executive Order: 11738 “Providing for Administration of the Clean Air Act and the Federal Water Pollutant Act with respect to Federal Contracts, Grants, or Laws”

Executive Order 11738 states that it is national policy for Federal agencies through their contracts for the procurement of goods, materials, or services to promote the effective implementation of the Clean Air and Clean Water Acts.

DoD Directive: 4210.15 “Hazardous Materials Pollution Prevention”

DoDD 4210.15 requires DoD to become the Federal leader in environmental compliance and protection. This directive requires pollution prevention and compliance with all pertinent environmental and worker health regulations to “. . . avoid harm to human health and the environment”.

DoD Instructions: 5000.2 “Defense Acquisition Management Policies and Procedures”

DoDI 5000.2 gives the program manager a broad defense acquisition management framework. It emphasizes reducing the use of hazardous materials in processes and in products. It also requires that the environmental consequences of a system be analyzed and documented at each decision phase of the system developmental process. This analysis requires a systematic examination of the environmental

consequences of a program along with proposals to mitigate significant adverse impacts. Life-cycle cost accounting is described as a key program management tool.

DoD Manual: 5000.2-M “Defense Acquisition Management Documentation and Reports”

DOD Manual 5000.2-M includes all of the requirements for overall program management and environmental documentation.

DoD Directive: 6050.1 “Environmental Effects in the United States of DoD Actions:

This directive defines policy and requires DoD to assess environmental consequences of proposed actions that could affect the quality of the environment in the United States. DoDD 6050.1 requires DoD managers to comply with NEPA requirements. The overall directive objective is to achieve the widest range of beneficial uses of the environment without degradation, minimize risks to health and safety, or otherwise avoid unintended environmental consequences.

DoD Directive: 6050.9 “Chlorofluorocarbons (CFCs) and Halons”

This directive stresses the need to prevent and eliminate uses for CFC and Halon materials. DoDD 6050.9 states that it is DoD policy to effectively manage the use of such materials when no substitutes are available. All CFCs, Halons and all other ozone-depleting chemicals (ODCs) are included in this directive.